

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 20277
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Sergey N. RAZUMOV	:	Confirmation Number: 3651
	:	
Application No.: 09/891,321	:	Tech Center Art Unit: 3627
	:	
Filed: June 27, 2001	:	Examiner: Gerald J. O'Connor
	:	
For: METHOD AND SYSTEM FOR SELLING CLOTHES	:	

REPLY BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed on March 20, 2007.

REMARKS

It is respectfully submitted that in the Examiner's Answer, the Examiner did not address the Appellant's arguments that in his obviousness analysis the Examiner failed to properly ascertain the differences between the prior art and the claims in issue in accordance with *Graham v. John Deere Co.* 383 U.S. 1, 13, 148 U.S.P.Q. 459, 465 (1966).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

The Examiner has failed to consider whether the claimed invention as a whole would have been obvious over the applied prior art combination.

Moreover, the Examiner misrepresents the Appellant's position by stating that "in any event, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references."

By contrast, the Appellant argued that the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art. In the Appeal Brief, the Appellant demonstrated that the combined prior art teachings are not sufficient to one of ordinary skill in the art to suggest the claimed invention that requires the computer system to match a customer with the human models having characteristics corresponding to customer's body measurements, and to pre-select a smaller number of items among goods available in a certain category based on evaluation marks pre-set when the goods are tried on by the respective human model.

As discussed in more detail in the Appeal Brief, the claimed invention addresses the problem of inability of computer-generated images generated based on mathematical models to accurately

represent human bodies. As a result, the garments ordered by customers do not fit properly (page 2, lines 16-20 of the present application).

To solve this problem, the claimed invention suggests using a human model representing a certain category of goods to try on the goods in this category. When the goods are tried on by the human model, evaluation is performed to preset quantitative evaluation marks for the goods. A computer system matches a customer with the human model having characteristics corresponding to the body measurements of the customer to enable the customer to select goods based on evaluation made when the goods are tried on by this human model. As a result, the customer may select goods based on subjective factors defined by a human being rather than by a mathematical model.

By contrast, neither Bailey nor Gazzuolo applied in the Examiner's rejection recognizes the problem caused by computer-generated models. Both of these references suggest using the mathematical models for selecting goods. Therefore, they expressly teach away from the claimed invention.

It is noted that using human models, instead of computer-generated models, in an Internet-based system for selling cloths yields unexpected results. The claimed system is able to reduce the number of goods presented to a customer in each category based on subjective human perception similar to perception of customers that try goods in a physical store. Hence, the claimed system enables an Internet-based shopper to purchase goods which are the same or similar to the goods that the shopper would buy while shopping in a physical store.

It is noted that the Examiner misrepresents the Appellant's arguments regarding problems and solution addressed by the claimed invention. The Examiner asserts that "applicant is arguing that the applied prior art references are directed to nonanalogous art."

However, in the Appeal Brief, the Appellant submitted that the discovery of the source of a problem is part of the 'subject matter as a whole' which should always be considered in determining the

obviousness of an invention under 35 U.S.C. § 103. The Examiner did not respond to the Appellant's argument that the prior art combination fails to address the problem and solution addressed by the claimed invention.

Further, the Examiner misrepresents the Appellant's position by addressing "the argument that Gazzuolo fails to disclose that the evaluation marks for fit are quantitative in a range from a lower mark to a higher mark." Instead, the Appellant submitted that "the combined teachings of Bailey with Gazzuolo would not teach or suggest reducing the number of goods presented to the customer to a smaller group of items based on the quantitative evaluation marks determined when the corresponding human model tried on the goods, as the claimed invention requires."

The Examiner did not address this argument as well as multiple other arguments presented in the Appeal Brief.

For the reasons presented in the Appeal Brief and above, Appellant respectfully submits that the grounds of rejection of the claims on appeal is in error and should be reversed.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Alexander V. Yampolsky
Registration No. 36,324

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 AVY:apr
Facsimile: 202.756.8087
Date: May 17, 2007

**Please recognize our Customer No. 20277
as our correspondence address.**